

立法會
Legislative Council

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Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Thursday, 29 April 2010, at 8:30 am
in the Chamber of the Legislative Council Building

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
 - Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - Hon LEE Cheuk-yan
 - Hon Emily LAU Wai-hing, JP
 - Hon Abraham SHEK Lai-him, SBS, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Tommy CHEUNG Yu-yan, SBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon WONG Kwok-hing, MH
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon Andrew LEUNG Kwan-yuen, SBS, JP
 - Hon WONG Ting-kwong, BBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Hon CHIM Pui-chung
 - Dr Hon LAM Tai-fai, BBS, JP
 - Hon CHAN Kin-por, JP
 - Hon CHEUNG Kwok-che
 - Hon WONG Sing-chi
 - Hon IP Wai-ming, MH
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Dr Hon PAN Pey-chyou
 - Hon Paul TSE Wai-chun
 - Dr Hon Samson TAM Wai-ho, JP
- Members absent** :
- Hon LEUNG Yiu-chung
 - Hon Miriam LAU Kin-ye, GBS, JP
 - Hon Frederick FUNG Kin-kee, SBS, JP
 - Hon Vincent FANG Kang, SBS, JP
 - Hon Cyd HO Sau-lan

Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP

Public Officers attending : Mr Alan WONG Kwok-lun, JP
Deputy Commissioner for Labour (Labour Administration)

Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support and
Strategic Planning)

Miss Mabel LI Po-yi
Chief Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Ms Queenie TANG Yuen-shan
Senior Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice

Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at

Annex).

2. The Bills Committee requested the Administration to -

The special arrangement

- (a) explain whether the special arrangement for persons with disabilities ("PWDs") with a view to minimizing any possible adverse impact of the statutory minimum wage ("SMW") on their employment opportunities including the exemption for the termination of the employment contract on account of the outcome of an assessment made under Schedule 2 to the Bill was in conformity with the Basic Law and the Disability Discrimination Ordinance ("DDO");
- (b) explain the considerations for exempting employers from DDO for dismissal on account of the outcome of an assessment under clause 23 and whether the dismissal would be allowed under the DDO if the exemption was not provided in clause 23;
- (c) advise whether a serving PWD could invoke the special arrangement, and if so, how the trial period would be counted;
- (d) provide information on the transitional arrangement, if any, for PWDs already in employment;
- (e) consider whether to set a certain minimum percentage, say 50% of the SMW rate, for employees with a disability irrespective of the outcome of productivity assessment;

Trial period

- (f) explain the protection provided to PWDs during the trial period of employment (and the trial period extended under exceptional circumstances) as referred to in section 2 of Schedule 2;
- (g) consider whether to allow employees and employers to apply the percentage of prescribed minimum hourly wage rate applicable to a PWD during the trial period of employment based on the degree of productivity subsequently assessed instead of 50% as specified in section 3 of Schedule 2, or to make retrospective claims on the wage difference;

The approved assessor and the assessment

- (h) advise the status and legal responsibility of an approved assessor, his qualifications and training required of;

- (i) advise the cost of assessment and the party to pay for the cost;
- (j) consider the suggestion that the cost of assessment of the degree of PWDs' productivity should be borne by the Administration;

Review of assessment

- (k) consider whether to provide an opportunity for the review of an assessment or re-assessment in the event of dispute about the assessment results, deteriorated health of a PWD, or improved productivity of the PWD as he became familiarized with his work ;
- (l) consider whether to put in place a mechanism for appeal against the results of the productivity assessment of PWDs;

Certificate of assessment

- (m) explain why the certificate of assessment had to be signed by the three parties including the PWD, the employer and the approved assessor as stipulated in section 5(2)(c) of Schedule 2 and advise the status and effect of the certificate in the event that the employer or the PWD refused to sign the certificate;
- (n) consider whether to require only the approved assessor to sign the certificate of assessment;
- (o) consider whether to impose sanction on the employer for failing to sign the certificate of assessment; and
- (p) consider whether to stipulate in the Bill that in the event that an employee had changed his job or found a new employer, the certificate of assessment in respect of the original job would no longer be applicable to his new employer.

3. The Bills Committee agreed to seek clarification from the Equal Opportunities Commission on the following -

- (a) whether the dismissal of a PWD on account of the outcome of an assessment made under Schedule 2 to the Bill was consistent with DDO;
- (b) whether DDO would have the effect of exempting an employer dismissing a PWD on account of the outcome of the assessment, even if the exemption was not provided in clause 23 of the Bill;

- (c) whether there was any DDO issue in the following -
 - (i) a mechanism established for appeal against the results of an assessment; and
 - (ii) an opportunity provided for the review of an assessment or re-assessment in the event of dispute about the assessment results, deteriorated health of the PWD, or improved productivity of the PWD as he became familiarized with his work.

4. The Bills Committee also agreed that rehabilitation groups should be invited to give views on the need for an appeal mechanism and an opportunity for the review of an assessment or re-assessment in the event of dispute about the assessment results.

II. Date of next meeting

5. The Bills Committee noted that the next meeting would be held on 4 May 2010 at 4:30 pm.

6. The meeting ended at 10:36 am.

Council Business Division 2
Legislative Council Secretariat
17 August 2010

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 29 April 2010, 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000627	Chairman	Opening remarks	
000628 - 000912	Chairman Admin	Briefing by the Administration on the special arrangement for persons with disabilities ("PWDs") whose productivity might be impaired by their disabilities with a view to minimizing any possible adverse impact of the statutory minimum wage ("SMW") on their employment opportunities. The assessment of degree of productivity of PWDs was set out in Schedule 2 to the Bill	
000913 - 001448	Chairman Hon LEE Cheuk-yan Admin	Exemption for dismissal on account of the outcome of the productivity assessment from the Disability Discrimination Ordinance ("DDO") as provided in clause 23 and reasons thereof; whether the Administration would consider subsidizing the difference if a PWD was remunerated at a level commensurate with his productivity assessment, which was below the SMW rate; reasons for maintaining a simple and user-friendly assessment mechanism	
001449 - 001958	Chairman Hon LI Fung-ying Admin	Protection provided to PWDs during the trial period of employment (and trial period extended under exceptional circumstances) as referred to in section 2 of Schedule 2; whether the assessment mechanism for PWDs would be put in place when the Bill commenced operation; consultations with the relevant stakeholders on the implementation details in Schedule 2	Admin to respond

Time marker	Speaker	Subject(s)	Action Required
001959 - 002714	Chairman Hon Ronny TONG Admin	Consistency of the special arrangement for PWDs and exemption for the act of dismissal on account of the outcome of the productivity assessment with DDO and Article 39 of the Basic Law (paragraph 36 of the LegCo Brief); engagement with the relevant stakeholders, the Department of Justice and the Equal Opportunities Commission ("EOC") on the issue	Admin to respond
002715 - 003332	Chairman Hon IP Wai-ming Admin	PWD (not the employer) to invoke the assessment mechanism; possibility of a PWD being forced to invoke the assessment mechanism; the length of trial period; application for extending the trial period of employment to be made jointly by a PWD and the employer; when an employer had to start paying a PWD the minimum wage level commensurate with his degree of productivity assessed; EOC's advice on the compatibility of clause 23 with DDO; termination of employment if either the PWD or the employer was not satisfied with the outcome of the productivity assessment	
003333 - 003845	Chairman Dr Hon PAN Pey-chyou Admin	Whether a serving PWD could invoke a productivity assessment; reasons for not putting in place a re-assessment or appeal mechanism; circumstances under which a PWD could invoke the special arrangement	
003846 - 004429	Chairman Hon CHEUNG Kwok-che Admin	Possibility of a PWD being forced to invoke the assessment mechanism; reasons for not having a re-assessment mechanism; methods of assessing the productivity of a PWD; role of an approved assessor	
004430 - 005217	Chairman Hon Paul TSE Admin	Exemptions provided under DDO; whether new assessment could be made for different work; whether an	

Time marker	Speaker	Subject(s)	Action Required
		assessment could be conducted on a PWD before he took up employment with the employer; reasons for providing a trial period of four weeks for PWDs in a workplace; circumstances under which a PWD could invoke the special arrangement; reasons for maintaining a simple and user-friendly assessment mechanism	
005218 - 005824	Chairman Hon WONG Sing-chi Admin	Whether the assessment mechanism was discriminatory; a quota system for PWD to be employed in the public and private sectors; reasons for not having re-assessment of productivity when performing the same work with the same employer; reasons for introducing a special arrangement for PWDs	
005825 - 010426	Chairman Hon Andrew LEUNG Admin	Assessment mechanism for PWDs adopted by other jurisdictions; reasons for maintaining a simple and user-friendly assessment mechanism; difference between the trial period of PWDs and probation period of employees; exemption from DDO to be provided to an employer who had dismissed a PWD on account of the outcome of the productivity assessment only	
010427 - 011323	Chairman Hon Audrey EU Admin	Status and legal responsibility of an approved assessor; cost of assessment and the party to pay for the cost; the percentage of prescribed minimum hourly wage rate applicable to a PWD during the trial period of employment as specified in section 3 of Schedule 2	Admin to respond
011324 - 012730	Chairman Hon WONG Kwok-hing Admin SALA2	Suggestion that the cost for assessing the productivity of PWDs should be borne by the Government to prevent conflict of interest; reasons for not putting in place an appeal or re-assessment mechanism; problems arising from	Admin to respond

Time marker	Speaker	Subject(s)	Action Required
		the review of an assessment or re-assessment, if allowed; requirement of the certificate of assessment of the degree of productivity of a PWD to be signed by the PWD and the employer as well as the approved assessor as provided in section 5(2)(c) of Schedule 2; status and effect of the certificate in the event that the employer or employee refused to sign the certificate of assessment	
012731 - 013311	Chairman Hon LEE Cheuk-yan Admin	Reasons for clause 23 to provide the exemption for dismissal on account of the outcome of an assessment from DDO; problems arising from the review of an assessment or re-assessment of the productivity of a PWD, if allowed; requirement of the certificate of assessment to be signed by the PWD, the employer and the approved assessor; whether dismissing a PWD on account of the outcome of the assessment would be allowed under the DDO if the exemption was not provided in clause 23 of the Bill	
013312 - 014154	Chairman Hon IP Wai-ming Admin SALA2	Reasons for the exemption from DDO for dismissal on account of the outcome of the productivity assessment; reasons for maintaining a simple and user-friendly assessment mechanism; the need to enquire with EOC and rehabilitation groups on the issues raised by the Bills Committee	
014155 - 014612	Chairman Hon LI Fung-ying Admin	Relationship between an employer and employee during the trial period of employment; qualifications of the approved assessors; methods of assessing the productivity of a PWD	
014613 - 015037	Chairman Hon Albert HO Admin	Procedures for applying for a valid Registration Card for PWDs issued by the Central Registry for	

Time marker	Speaker	Subject(s)	Action Required
		Rehabilitation; application for the Registration Card by persons with mental disorder and new arrivals from the Mainland; purpose of issuing the Registration Card for PWDs; merits of using the Registration Card to confirm eligibility to invoke the assessment mechanism	
015038 - 015608	Chairman Hon CHEUNG Kwok-che Admin	Retrospective claims, if any, by employees and employers on the wage difference with regard to the percentage of the degree of productivity assessed during the trial period; reasons for not having another assessment for performing the same work with the same employer; qualifications and training required of an approved assessor; rationale for setting the prescribed minimum hourly wage rate during the trial period at 50%; assessment of the productivity of a PWD	Admin to respond
015609 - 015938	Chairman Dr Hon PAN Pey-chyou Admin	Reasons for not having a re-assessment of productivity for performing the same work with the same employer; possibility of an employer and an employee to negotiate a contractual wage higher than the SMW rate calculated with the assessed degree of productivity stated in the certificate of assessment; right to invoke the special arrangement by serving employees who became PWDs during employment	Admin to respond
015939 - 020835	Chairman Hon Ronny TONG Hon WONG Kwok-hing Hon Audrey EU Hon LEE Cheuk-yan Dr Hon PAN Pey-chyou	Whether the Bill should sanction an employer for failing to sign the certificate of assessment; whether a provision should be added to the Bill to specify that in the event that an employee had changed his job or found a new employer, the certificate of assessment in respect of the original job would no longer be applicable to his new employer;	Admin to respond and Clerk to follow up with EOC and rehabilitation groups

Time marker	Speaker	Subject(s)	Action Required
		<p>the need to seek views from EOC on the issues raised by members; the need to seek views from rehabilitation groups on whether there was a need for the review of an assessment or re-assessment in the event of dispute about the assessment results; status and effect of the certificate of assessment if one of the parties did not sign the certificate; considerations for the exemption from DDO under clause 23; whether a wage floor, say 50% of the SMW rate, should be established for PWDs who had undergone an assessment; transitional arrangement for PWDs already in employment</p> <p>Date of next meeting</p>	

Council Business Division 2
Legislative Council Secretariat
17 August 2010